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# राजपत्र, हिमाचल प्रदेश

## (असाधारण)

हिमाचल प्रदेश राज्यशासन द्वारा प्रकाशित

शिमला, वीरवार, 7 अप्रैल, 1977/17 चैत्र, 1899

**GOVERNMENT OF HIMACHAL PRADESH**

**VIDHAN SABHA SECRETARIAT**

**NOTIFICATION**

*Simla-171004, the 4th April, 1977*

**No. 1-12/77-VS.**—In pursuance to rule 135 of the Rules of Procedure and Conduct of Business, Himachal Pradesh Legislative Assembly, 1973, the Himachal

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Pradesh General Sales Tax (Seventh Amendment) Bill, 1977 (Bill No. 5 of 1977) having been introduced on the 4th April, 1977, is hereby published in the Gazette.

V. P. BHATNAGAR,  
*Secretary.*

Bill No. 5 of 1977.

**THE HIMACHAL PRADESH GENERAL SALES TAX (SEVENTH AMENDMENT) BILL, 1977**

(AS INTRODUCED IN THE LEGISLATIVE ASSEMBLY)

A

**BILL**

*further to amend the Himachal Pradesh General Sales Tax Act, 1968 (Act No. 24 of 1968).*

BE it enacted by the Legislative Assembly of Himachal Pradesh in the Twenty-eighth Year of the Republic of India, as follows:—

1. (1) This Act may be called the Himachal Pradesh General Sales Tax (Seventh Amendment) Act, 1977.

Short title and commencement.

(2) It shall come into force at once.

2. In section 2 of the Himachal Pradesh General Sales Tax Act, 1968 (hereinafter called the principal Act) the following amendments shall be and shall always be deemed to have been made, namely:—

Amendment of section 2.

(a) after clause (a) the following new clause (aa) shall be inserted:—

“(aa) “business” includes,—

(i) any trade, commerce or manufacture, or any adventure or concern in the nature of trade, commerce, or manufacture, whether or not such trade, commerce, manufacture, adventure or concern is carried on with a motive to make gain or profit and whether or not any gain or profit accrues from such trade, commerce, manufacture, adventure or concern; and

(ii) any transaction in connection with, or incidental or ancillary to, such trade, commerce, manufacture, adventure or concern;”;

(b) for clause (c) the following clause (c) shall be substituted, namely:—

“(c) “dealer” means any person who carries on (whether regularly or otherwise) the business of buying, selling, supplying or distributing goods, directly or indirectly, for cash, or for deferred payment, or for commission, remuneration or other valuable consideration and includes:—

(i) a local authority, a body corporate, a company, a co-operative society or other society, club, firm, Hindu undivided family or other association of persons which carries on such business;

(ii) a factor, broker, commission agent, a dealer's agent or any other mercantile agent, by whatever name called, and whether of the same description as hereinbefore

mentioned or not, who carries on the business of buying, selling, supplying or distributing goods belonging to any principal, whether disclosed or not; and

- (iii) an auctioneer who carries on the business of selling or auctioning goods belonging to any principal, whether disclosed or not, and whether the offer of the intending purchaser is accepted by him or by the principal or a nominee of the principal.

*Explanations.*—(1) Every person who acts as an agent in Himachal Pradesh of a dealer residing outside this State and buys, sells, supplies or distributes goods in the State or acts on behalf of such dealer as—

- (i) a mercantile agent as defined in the Sale of Goods Act, 1930; or  
(ii) an agent for handling of goods or documents of title relating to goods; or  
(iii) an agent for the collection of the payment of the sale price of goods or as a guarantor for such collection or payment;

and every local branch or office in Himachal Pradesh of a firm registered outside this State or a company or other body corporate, the principal office or headquarters whereof is outside this State, shall be deemed to be a dealer for the purpose of this Act.

(2) A Government which whether or not in the course of business, buys, sells, supplies or distributes goods, directly or otherwise, for cash or for deferred payment or for commission, remuneration or other valuable consideration, shall, except in relation to any sale, supply or distribution of surplus, unserviceable or old stores or materials or waste products or obsolete or discarded machinery or parts or accessories thereof, be deemed to be a dealer for the purpose of this Act.

(3) For the purpose of this clause “Government” shall include the Central Government or the Government of any other State or Union territory;”

(c) for clause (e) the following clause (e) shall be substituted:—

“(e) “goods” means every kind of movable claims, stocks, shares or securities, and includes growing crops, grass, trees and things attached to or fastened to anything permanently attached to the earth but which under the contract of sale, are agreed to be severed, and includes any class of goods;” and

(d) after clause (l) the following clause (ll) shall be inserted:—

“(ll) “timber” includes trees when they have fallen, or have been felled or agreed to be felled and all wood whether cut up or fashioned or hollowed out for any purpose or not;”

Substitution  
of sec-  
tion 13.

3. For the existing section 13 of the principal Act, the following section 13 shall be substituted and shall always be deemed to have been substituted, namely:—

“(13) *Prohibition against collection of tax in certain cases.*—(1) No person shall collect any sum by way of tax in respect of sale or purchase of any goods on which no tax is payable under this Act.

- (2) No person, who is not a registered dealer and liable to pay tax in respect of any sale or purchase, shall collect on the sale or purchase of any goods any sum by way of tax from any other person and no registered dealer shall collect any amount by way of tax in excess of the amount of tax payable by him under this Act.
- (3) If any person, not being a dealer liable to pay tax under this Act, collects any sum by way of tax, or being a registered dealer collects any amount by way of tax in excess of the tax payable by him or otherwise collects tax in contravention of the provisions of sub-sections (1) and (2) he shall be liable to pay, in addition to any tax for which he may be liable, a penalty of an amount not exceeding five hundred rupees, or double the amount so collected, whichever is greater.
- (4) If the Commissioner, or any person appointed to assist him under sub-section (1) of section 3, in the course of any proceedings under this Act or otherwise, has reason to believe that any person has become liable to pay penalty under sub-section (3), he shall serve on such person a notice in the prescribed form requiring him to show cause why a penalty as provided in sub-section (3) should not be imposed on him.
- (5) The Commissioner or any person appointed to assist him under sub-section (1) of section 3 shall thereupon hold an enquiry and shall make such order as he thinks fit."

4. After the existing section 28 of the principal Act, the following new section 28-A shall be added and shall always be deemed to have been added, namely:—

Insertion of  
new section  
28-A.

'28-A. *Liability of legal heirs to pay tax.*—Where a dealer liable to pay tax under this Act, dies, then—

- (a) if the business carried on by the dealer is continued after his death by his legal representative or any other person, such legal representative or other person shall be liable to pay the tax (including any penalty) due from the dealer under this Act, whether such tax (including any penalty) has been assessed before his death but has remained unpaid, or is assessed after his death ;
- (b) if the business carried on by the dealer is discontinued after his death, his legal representative shall be liable to pay out of the estate of the deceased to the extent the estate is capable of meeting the charge, the tax (including any penalty) due from the dealer under this Act, whether such tax (including any penalty) has been assessed before his death, or is assessed after his death ;

and the provisions of this Act shall, so far as may be, apply to such legal representative, or other person as if he were the dealer himself."

## STATEMENT OF OBJECTS AND REASONS

The present definition of the word "dealer" in the Himachal Pradesh General Sales Tax Act, 1968 is not comprehensive. The term "business" has also not been defined in the Act, which leads to confusion in the minds of traders as well as the assessing authority. The word "timber" has been included in schedule 'A' appended to the Himachal Pradesh General Sales Tax Act, 1968 *vide* Himachal Pradesh Amending Act No. 1 of 1977. As such the same is also required to be defined in the principal Act as well as in the definition of "goods". It has also been felt in the past that the existing section 13 requires to be suitably worded. Besides at present there is no provision with regard to the liability of legal heirs of an assessee to pay tax and as such a provision to this effect by adding new section 28-A has been made.

This Bill seeks to achieve the aforesaid objects.

SIMLA:  
The , 1977.

RAM LALL,  
*Minister-in-Charge.*

## FINANCIAL MEMORANDUM

Clause 2 of the Bill widens the scope of the definition of the expressions "dealer" and "goods". Similarly clause 4 of the Bill imposes the liability to pay tax, including penalty, on the legal heirs of a dealer. Consequent upon the Bill being enacted is likely to enhance the revenue of the State indirectly. However, the exact amount of such increase cannot be worked out at this stage. No extra expenditure will be incurred on this account.

## MEMORANDUM ON DELEGATED LEGISLATION

Nil

## RECOMMENDATIONS OF THE GOVERNOR UNDER ARTICLE 207 OF THE CONSTITUTION OF INDIA

[Excise & Taxation Deptt. file No. EXN. F(11)-27/76]

The Governor of Himachal Pradesh, having been informed of the subject matter of the Himachal Pradesh General Sales Tax (Seventh Amendment) Bill, 1977, recommends under Article 207 of the Constitution of India, the introduction and consideration of the Bill in the Legislative Assembly.